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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE'S LETTER BRIEF RE:
DAUBERT MOTION TO EXCLUDE
CERTAIN OPINIONS OF PLAINTIFFS'
EXPERT JOHNATHAN HOCHMAN
PURSUANT TO DKT. 988**

Judge: Hon. Yvonne Gonzalez Rogers

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google’s Letter Brief to Exclude Certain Opinions of Plaintiffs’ Expert Johnathan Hochman (“Google’s Brief”), pursuant to the Court’s Order (Dkt. 988), which contains non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including various types of Google’s internal projects, data sources, and their proprietary functionalities, as well as internal metrics. This information is highly confidential and should be protected.

This administrative motion pertains to the following information contained in Google’s Brief:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Exhibit A: Second Supplemental Expert Report of Jonathan E. Hochman	Highlighted Portions at: 2-19	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he

1 public policies that support the right of access to dispositive motions, and related materials, do not
 2 apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM,*
 3 *LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to
 4 nondispositive motions are not subject to the strong presumption of access.”) (citation omitted).
 5 Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 6 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 7 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 8 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 9 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 10 “good cause” standard) (Van Keulen, J.).

11 Courts in this District have held that motions to exclude the testimony of experts are
 12 nondispositive. *TVIIM, LLC v. McAfee, Inc.*, 2015 WL 3623656, at *4 (N.D. Cal. June 10, 2015)
 13 (“Because Plaintiff’s motion to exclude testimony is not a dispositive motion, the Court applies the
 14 “good cause” standard.”).

15 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

16 Although the materials that Google seeks to seal here easily meet the higher “compelling
 17 reasons” standard, the Court need only consider whether these materials meet the lower “good
 18 cause” standard. Courts have repeatedly found it appropriate to seal documents that contain
 19 “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-
 20 99. Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential
 21 information about the operation of [the party’s] products and that public disclosure could harm [the
 22 party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys.,*
 23 *Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s
 24 competitive standing may be sealed even under the “compelling reasons” standard. *See e.g.,*
 25 *Williams v. Apple, Inc.*, 2021 WL 2476916, at *3 (N.D. Cal. June 17, 2021) (finding “public
 26 disclosure of key metrics . . . would harm [defendant’s] competitive standing” and therefore is
 27 appropriate for sealing); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121,
 28 at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling

1 reasons’ standard where that information could be used to the company’s competitive
2 disadvantage”) (citation omitted).

3 Here, the good cause standard is satisfied. Exhibit A to Google’s Brief contains confidential
4 and proprietary information as the materials involve highly sensitive features of Google’s internal
5 systems and operations that Google does not share publicly. Specifically, this information provides
6 confidential details related to Google’s metrics, projects and their proprietary functions. Such
7 information reveals Google’s internal strategies, system designs, and business practices for
8 operating and maintaining many of its important services while complying with legal and privacy
9 obligations.

10 Public disclosure of the above-listed information would harm Google’s competitive standing
11 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
12 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
13 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
14 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
15 sensitive business information related to Google’s processes and policies to ensure the integrity and
16 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
17 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
18 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
19 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
20 motion to seal as to “internal research results that disclose statistical coding that is not publicly
21 available”).

22 Moreover, if publicly disclosed, malicious actors may use such information to seek to
23 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
24 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
25 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
26 affects how messages are transmitted” because if made public, it “could lead to a breach in the
27 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
28 identified information.

1 The information Google seeks to redact is the minimal amount of information needed to
 2 protect its internal systems and operations from being exposed to not only its competitors but also
 3 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
 4 The “good cause” rather than the “compelling reasons” standard should apply but under either
 5 standard, Google’s sealing request is warranted.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Google respectfully requests that the Court seal the identified
 8 portions of Google’s Brief.

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 10 DATED: September 20, 2023

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